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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/679,203	10/02/2003	Andrew Mark Gutman	1004-229	4568
47654 7590 11/09/2009 BAINWOOD HUANG & ASSOCIATES LLC 2 CONNECTOR ROAD WESTBOROUGH, MA 01581				
EXAMINER				
HARRELL, ROBERT B				
ART UNIT		PAPER NUMBER		
2442				
MAIL DATE		DELIVERY MODE		
11/09/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# **Notice of Non-Compliant Amendment (37 CFR 1.121)**

Application No.

10/679,203

Examiner

Robert B. Harrell

Applicant(s)

GUTMAN ET AL.

Art Unit

2442

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

The amendment document filed on 27 August 2009 is considered non-compliant because it has failed to meet the requirements of 37 CFR 1.121 or 1.4. In order for the amendment document to be compliant, correction of the following item(s) is required.

THE FOLLOWING MARKED (X) ITEM(S) CAUSE THE AMENDMENT DOCUMENT TO BE NON-COMPLIANT:

- ☒ 1. Amendments to the specification:
  - ☐ A. Amended paragraph(s) do not include markings.
  - ☐ B. New paragraph(s) should not be underlined.
  - ☒ C. Other see paragraph 5 below.
- ☐ 2. Abstract:
  - ☐ A. Not presented on a separate sheet. 37 CFR 1.72.
  - ☐ B. Other \_\_\_\_\_.
- ☐ 3. Amendments to the drawings:
  - ☐ A. The drawings are not properly identified in the top margin as "Replacement Sheet," "New Sheet," or "Annotated Sheet" as required by 37 CFR 1.121(d).
  - ☐ B. The practice of submitting proposed drawing correction has been eliminated. Replacement drawings showing amended figures, without markings, in compliance with 37 CFR 1.84 are required.
  - ☐ C. Other \_\_\_\_\_.
- ☒ 4. Amendments to the claims:
  - ☐ A. A complete listing of all of the claims is not present.
  - ☐ B. The listing of claims does not include the text of all pending claims (including withdrawn claims).
  - ☒ C. Each claim has not been provided with the proper status identifier, and as such, the individual status of each claim cannot be identified. Note: the status of every claim must be indicated after its claim number by using one of the following status identifiers: (Original), (Currently amended), (Canceled), (Previously presented), (New), (Not entered), (Withdrawn) and (Withdrawn-currently amended).
  - ☐ D. The claims of this amendment paper have not been presented in ascending numerical order.
  - ☐ E. Other: \_\_\_\_\_.
- ☒ 5. Other (e.g., the amendment is unsigned or not signed in accordance with 37 CFR 1.4):  
See Continuation Sheet

For further explanation of the amendment format required by 37 CFR 1.121, see MPEP § 714.

TIME PERIODS FOR FILING A REPLY TO THIS NOTICE:

1. Applicant is given **no new time period** if the non-compliant amendment is an after-final amendment or an amendment filed after allowance. If applicant wishes to resubmit the non-compliant after-final amendment with corrections, the **entire corrected amendment** must be resubmitted.
2. Applicant is given **one month**, or thirty (30) days, whichever is longer, from the mail date of this notice to supply the correction, if the non-compliant amendment is one of the following: a preliminary amendment, a non-final amendment (including a submission for a request for continued examination (RCE) under 37 CFR 1.114), a supplemental amendment filed within a suspension period under 37 CFR 1.103(a) or (c), and an amendment filed in response to a *Quayle* action. If any of above boxes 1. to 4. are checked, the correction required is only the **corrected section** of the non-compliant amendment in compliance with 37 CFR 1.121.

**Extensions of time** are available under 37 CFR 1.136(a) only if the non-compliant amendment is a non-final amendment or an amendment filed in response to a *Quayle* action.

**Failure to timely respond** to this notice will result in:

**Abandonment** of the application if the non-compliant amendment is a non-final amendment or an amendment filed in response to a *Quayle* action; or

**Non-entry** of the amendment if the non-compliant amendment is a preliminary amendment or supplemental amendment.

(571) 272-3895

/Robert B. Harrell/

Primary Examiner Art Unit 2442

## Continuation of 5 Other:

5a. The applicant is again reminded that amendments are not governed by 37 C.F.R. 1.121 but by 37 C.F.R. 1.173 per 37 C.F.R. 1.121(i). The claim listing again presented in this application fails to comply with the provisions of 37 CFR 1.173 since claims 31-et seq. should have the status identifier of (New Amended), or some other equivalent means, to distinguish that it is (1) New, with respect to the parent patent claims, and (2) Amended since their original addition. A supplemental paper claim listing correctly amending the reissue application is required.

5b. Again, amendments in the June 2002 Certificate of Corrections are considered part of the original Patent (see 35 U.S.C. 254, MPEP 1400.01, and MPEP 1480). For example, the substitute specification filed 10 June 2009, page 7 of 17 (line 6), should not have brackets and underlines since such matter was incorporated by the June 2002 Certificate of Corrections; same for page 13 of 17 (line 20). Hence, a new and compliant Substitute Specification is required to be filed by the applicant in response to this paper.

5c. Per all of the above, the applicant must submit:

- i) a new claim listing correctly amending the reissue application, with respect to the original United States Patent per 37 C.F.R. 1.121(i) and 37 C.F.R. 1.173, by implementing correct status identifiers on a separate paper;
- ii) a new Substitute Specification, on a separate paper, clearly incorporating the changes indicated in the June 2002 Certificate of Correction; and,
- iii) on a separate paper, a listing, of each limitation of each claim, which points to corresponding support within the specification for the newly added claimed limitation(s).

5d. In conclusion, the applicant must correctly resubmit everything filed 10 June 2009. The applicant must review the whole of MPEP 1400 directed to reissues.

5e. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert B. Harrell whose telephone number is (571) 272-3895. The examiner can normally be reached Monday thru Thursday from 5:30 am to 2:00 pm.

5f. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Saleh Najjar, can be reached on (571) 272-4006. The fax phone number for all papers is (571) 273-8300.

5g. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 305-9600.

5h. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Robert B. Harrell/  
ROBERT B. HARRELL  
PRIMARY EXAMINER  
Art Unit 2442